



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/699,963

11/05/1999

Angela Masson

MASSON-001-US

4776

62008

7590

03/09/2009

MAIER & MAIER, PLLC  
1000 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

TO, TUAN C

ART UNIT

PAPER NUMBER

3663

MAIL DATE

DELIVERY MODE

03/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

1  
2  
3  
4 UNITED STATES PATENT AND TRADEMARK OFFICE  
5

6  
7 BEFORE THE BOARD OF PATENT APPEALS  
8 AND INTERFERENCES  
9

10  
11 *Ex parte* ANGELA MASSON  
12

13  
14 Appeal 2008-5592  
15 Application 09/699,963  
16 Technology Center 3600  
17

18  
19 Decided:<sup>1</sup> March 9, 2009  
20

21  
22 *Before:* WILLIAM F. PATE, III, JENNIFER D. BAHR, and  
23 FRED A. SILVERBERG, *Administrative Patent Judges.*  
24

25 SILVERBERG, *Administrative Patent Judge.*  
26  
27

28 DECISION ON APPEAL  
29

30 STATEMENT OF THE CASE

31 Appellant appeals under 35 U.S.C. § 134 (2002) from a Final  
32 Rejection of claims 68-73. Claims 20-47 and 60 have been withdrawn. No

<sup>1</sup> The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

1 other claims are pending. We have jurisdiction under 35 U.S.C. § 6(b)  
2 (2002).

3  
4 SUMMARY OF DECISION

5 We AFFIRM.

6 THE INVENTION

7 The Appellant's claimed invention is directed to a portable,  
8 computerized, electronic kit bag for aviation professionals including a  
9 portable computer having a central operating program for organizing the  
10 contents of a standard pilot kit bag (Spec.: paras. [0003], [0017] and [0018]).  
11 Claim 68, reproduced below, is representative of the subject matter on  
12 appeal.

13 68. A method of providing to and for use by an aircraft  
14 aviation professional or pilot a lightweight and easily  
15 manipulated electronic flight bag, comprising the steps of:

16 (a) providing a transportable laptop computer to be  
17 carded by said aviation professional to and from and within an  
18 aircraft and airport, in a carry bag;

19 (b) programming said laptop with linear and non-linear  
20 algorithms and operating programs capable of: processing flight  
21 information, manipulating flight related data in a non-linear  
22 algorithm thereby aiding in flight decision-making processes  
23 resulting in solutions to flight related mathematical  
24 computations and runway selections and aircraft operating  
25 parameters and procedures, calculating pilot fatigue limits and  
26 scheduling issues and fuel computations, providing data  
27 displays to said professionals; and

28 (c) loading aircraft and flight related data into the said  
29 laptop and pertaining to a flight plan, weather information for  
30 said flight plan, aircraft crew scheduling, aircraft maintenance  
31 information, aircraft load weight and balance, and flight  
32 passenger concerns.  
33

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Cline	US 4,642,775	Feb. 10, 1987
-------	--------------	---------------

The following rejections<sup>2</sup> by the Examiner are before us for review:

1. Claims 68-73 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. Claims 68-73 are rejected under 35 U.S.C. § 102(b) (2002) as being anticipated by Cline.

ISSUES

The issues before us are whether the Appellant has shown that the Examiner erred in rejecting claims 68-73 as being directed to non-statutory subject matter, and over Cline. These issues turn on whether: (1) claim 68 defines statutory subject matter; and (2) Cline discloses all of the elements as called for in claim 68.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

---

<sup>2</sup> The rejection of claims 68-73 under 35 U.S.C. § 1112, second paragraph, as set forth in the Final Rejection mailed April 19, 2007 (Final Rejection 3) has been withdrawn (Ans. 6).

- 1       1.     Cline discloses a flight planning system for obtaining flight plans  
2             and/or weather information that comprises a portable computer 40  
3             having a display 42, a keyboard 44, a modem 51 and a disk drive  
4             52; a flight management computer 14 and a data management unit  
5             20 located on an aircraft; an on ground data center 30; and a radio  
6             system 36 connected to the data center for communicating with the  
7             aircraft.
- 8       2.     Cline further discloses that the pilot, via the keyboard 44, inputs  
9             data into the computer 40 (col. 6, l. 52-col. 7, l. 10); thereafter the  
10            data center 30 computes three flight plans (col. 7, ll. 36-41); and  
11            then the pilot selects a desired flight plan (col. 7, ll. 42-58) and  
12            reviews factors related to the desired flight plan (col. 8, ll. 1-13)  
13            (fig. 1).
- 14       3.     Cline's inputted pilot data can include eighteen (18) pieces of data  
15             related to, *inter alia*, the basic flight plan, weather, aircraft and fuel  
16             (col. 6, l. 56-col. 7, l. 10; and Abstract).
- 17       4.     Cline's data center 30 can transmit weather data to the computer  
18             40 (col. 7, ll. 59-60).
- 19       5.     Cline's radio system 36 provides for in flight communication with  
20             the on ground data center 30 for in flight updates to the flight plan  
21             and/or the weather (col. 8, ll. 51-58).

#### PRINCIPLES OF LAW

24       “[E]ach invention must be evaluated as claimed; yet semantogenic  
25       considerations preclude a determination based solely on words appearing in  
26       the claims. In the final analysis under § 101, the claimed invention, as a

1 whole, must be evaluated for what it is.” *In re Sakar*, 588 F.2d 1330, 1333  
2 (CCPA 1978).

3 Anticipation is established only when a single prior art reference  
4 discloses, expressly or under the principles of inherency, each and every  
5 element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys.,*  
6 *Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). In other words, there must be no  
7 difference between the claimed invention and the reference disclosure, as  
8 viewed by a person of ordinary skill in the field of the invention. *Scripps*  
9 *Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir.  
10 1991). It is not necessary that the reference teach what the subject  
11 application teaches, but only that the claim read on something disclosed in  
12 the reference, i.e., that all of the limitations in the claim be found in or fully  
13 met by the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772  
14 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

15 When construing claim terminology in the United States Patent and  
16 Trademark Office, claims are to be given their broadest reasonable  
17 interpretation consistent with the Specification, reading claim language in  
18 light of the Specification as it would be interpreted by one of ordinary skill  
19 in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir.  
20 2004).

21 Where printed matter is not functionally related to the substrate, the  
22 printed matter will not distinguish the invention from the prior art in terms of  
23 patentability.” *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004).

ANALYSIS

Appellant argues claims 68-73 as a group. As such, we select claim 68 as representative of the group, and claims 69-73 will stand or fall with claim 68. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

*Rejection of claims 68-73 under 35 U.S.C. 101.*

The Examiner contends (Ans. 4) that claim 68 defines an operating program embodying functional descriptive material and that since the claim does not define a computer-readable medium or memory, it is non-statutory. We find that since the laptop stores the programmed material, the programmed material is on a computer readable medium. The Examiner presumes that claim 68 is drawn to an operating program; however, we find that claim 68 is drawn to a method. In particular, we find that claim 68 is drawn to method of providing a laptop (ll. 4-5), programming the laptop with linear and non-linear programs, and operating programs (hereinafter “programmed material”) (ll. 6-11); and loading data (ll. 12-15) on to the laptop. In the final analysis under § 101, the claimed invention, as a whole, must be evaluated for what it is.” *See Sakar* at 1333. We do not agree with the Examiner’s analysis (Ans. 4 and 6) regarding claim 68 being directed to non-statutory subject matter as we find that the Examiner misconstrued claim 68 as being drawn to an operating program and, therefore, did not address all of the method steps called for in claim 68. We agree with Appellant (Br. 4-5) and find that when all of the method steps called for in claim 68 are addressed, the claim is found to be drawn toward statutory subject matter. We conclude that the Examiner erred in rejecting claims 68-

1 73 as being directed to non-statutory subject matter. We reverse the  
2 rejection of claims 68-73 under 35 U.S.C. § 101.

3  
4 *Rejection of claims 68-73 under 35 U.S.C. § 102(b) as being anticipated by*  
5 *Cline.*

6  
7 Appellant contends (Br. 7-8) that Cline does not disclose inputting all  
8 of the data called for in claim 68. Claim 68 is a method claim that includes  
9 inputting six items of data (ll. 12-15). The six pieces of data define six data  
10 collections. While claim 68 characterizes the data as aircraft and flight  
11 related data pertaining to a flight plan, weather information, aircraft crew  
12 scheduling, aircraft maintenance information, aircraft load weight and  
13 balance, and flight passenger concerns, these characterizations do not define  
14 any functional or structural relationship between the data and the  
15 programmed laptop. Accordingly, these characterizations do not patentably  
16 distinguish the claimed data inputs from the data inputs of Cline. *See Ngai*,  
17 367 F.3d at 1339. *Compare In re Lowry*, 32 F.3d 1579, 1583-84 (Fed. Cir.  
18 1994) (claimed data structures that dictate how application programs manage  
19 information define functional characteristics of the memory and are not  
20 analogous to printed matter). Cline discloses inputting up to 18 pieces of  
21 data (Fact 3). Giving claim 68 its broadest reasonable interpretation, we  
22 agree with the Examiner's analysis (Ans. 5-8) and conclude that the  
23 inputting of Cline's 18 pieces of data satisfies the data loading step called for  
24 in claim 68. We affirm the rejection of claims 68-73 under 35 U.S.C. § 102.

25  
26 CONCLUSION OF LAW

27 We conclude that the Appellant has shown that the Examiner erred in  
28 rejecting claims 68-73 under 35 U.S.C. § 101 as being directed to non-



1 statutory subject matter. We conclude that the Appellant has not shown that  
2 the Examiner erred in rejecting claims 68-73 under 35 U.S.C. § 102(b) as  
3 being anticipated by Cline.

4  
5 DECISION

6 The decision of the Examiner to reject claims 68-73 as being directed  
7 to non-statutory subject matter is reversed. The decision of the Examiner to  
8 reject claims 68-73 over Cline is affirmed.

9 No time period for taking any subsequent action in connection with  
10 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

11  
12 AFFIRMED

Appeal 2008-5592  
Application 09/699,963

1

2

3

4

5

6

7

8

9 LV :

10

11 MAIER & MAIER, PLLC

12 1000 DUKE STREET

13 ALEXANDRIA, VA 22314